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RECENT CASES

ADJOINING LANDOWNERS—LATERAL SUPPORT—DAMAGES.—*ORR v. DAYTON & M. TRACTION CO.*, 96 N. E. (IND.), 462.—*Held*, that the damages recoverable for the removal of the lateral support from land is the depreciation in the value of the land; such damages being recoverable irrespective of negligence.

The right to the lateral support of one's land in its natural condition is universally conceded. *Trowbridge v. True*, 52 Conn., 190; *Cabot v. Kingman*, 166 Mass., 403; *Farrand v. Marshall*, 19 Barb. (N. Y.), 380. However, most Courts hold that no action lies for an injury to the right of support until actual damage has occurred, the actionable wrong not being the excavation, but the act of allowing the other's land to fall. *Bonomi v. Backhouse*, El. Bl. & El., 622; *Schultz v. Bower*, 57 Minn., 493; *Smith v. Scattle*, 18 Wash., 484. Some Courts hold that the measure for damages for the loss suffered is the cost of restoring the same to as good a condition as it was before the excavation was made. *Stimmel v. Brown*, 7 Houst., (Del.), 219. Other Courts hold that prospective damages may be granted, the object being to consider the possible future damage that will probably result from the excavation. *Williams v. Missouri Furnace Co.*, 13 Mo. App., 70; *McGowan v. Bailey*, 146 Pa., 572; *Jones v. Seattle*, 23 Wash., 753. In accord with the principal case, the measure of damages as recognized by most Courts is the diminution in market value of the injured property. *Schroeder v. Joliet*, 189 Ill., 48; *Moellering v. Evans*, 121 Ind., 195; *McGuire v. Grant*, 25 N. J. L., 356. And, moreover, the right to damages is maintainable whether or not there was any negligence. *Foley v. Wyeth*, 2 Allen (Mass.), 131; *Ulrich v. Dakota L. & T. Co.*, 2 S. D., 285. As this applies only to land in its natural state, it does not apply to lands burdened with buildings, and to recover for damage done to such buildings by the removal of lateral support, it is necessary to show negligence. *Gilmore v. Driscoll*, 122 Mass., 199.

CONTRACTS—LEGALITY—RESTRAINT OF TRADE.—*SMITH v. WEBB*, 50 SOUTHERN, 913, ALABAMA.—*Held*, that an agreement by a vendor of a business not to engage in a similar business in opposition to the vendee is not void as being in restraint of trade, although not limited as to time of duration.

The weight of American authority is to the effect that agreements in restraint of trade are valid if they are partial in their operation, based upon valuable consideration, and reasonable and unoppressive in their conditions. *Holmes v. Martin*, 10 Ga., 503; *Grasselli v. Lowden*, 11 Ohio, 349; *Booth & Co. v. Siebold*, 74 N. Y. S., 776. Thus where contracts are limited as to time and place they will be deemed valid; *Perkins v. Lyman*, 9 Mass., 522; *Perkins v. Clay*, 54 N. H., 518; but even where limited as